

CREW

citizens for responsibility
and ethics in washington

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November 18, 2015

Federal Election Commission
Office of Complaints Examination
and Legal Administration
Attn: Frankie Hampton, Paralegal
999 E Street, N.W.
Washington, D.C. 20463

Received
Federal Election Commission
Office of General Counsel
2015 NOV 18 PM 2:01

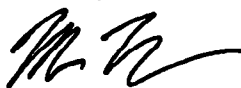
Re: MUR 6872/Amended Complaint

Dear Mr. Hampton:

Please find under cover of this letter an amended complaint in MUR 6872. We file this amended complaint to supplement the complainants provided in CREW's original complaint, filed on September 18, 2014. In the time during which CREW's complaint has been pending, CREW has experienced staff changes necessitating an update to the parties to the complaint. CREW submits this amended complaint to substitute me, CREW's current executive director, as a complainant for CREW's previous executive director, Melanie Sloan. Accordingly, the amended complaint includes new allegations specific to me (*see* Am. Compl. ¶¶ 1, 6, 7, and conclusion), and removes allegations specific to Ms. Sloan. The exhibits to the amended complaint are identical to the exhibits to the original complaint and are incorporated therein, but, in the interest of not duplicating copies in the administrative record, CREW does not resubmit the exhibits.

Please further note that our address has changed. Please direct all future correspondence to the address below.

Sincerely,



Noah Bookbinder
Executive Director
Citizens for Responsibility and Ethics
in Washington
455 Massachusetts Ave., N.W.
Sixth Floor
Washington, D.C. 20001
(202) 408-5565 (phone)
(202) 588-5020 (fax)
nbookbinder@citizensforethics.org

Encl.

FEDERAL ELECTION COMMISSION

In the matter of:

2015 NOV 18 PM 2:02

New Models

MUR No. 6872

AMENDED COMPLAINT

1. Citizens for Responsibility and Ethics in Washington ("CREW") and Noah Bookbinder bring this complaint before the Federal Election Commission ("FEC or "Commission") seeking an immediate investigation and enforcement action against New Models for direct and serious violations of the Federal Election Campaign Act ("FECA").

Complainants

2. Complainant CREW is a non-profit corporation, organized under section 501(c)(3) of the Internal Revenue Code. CREW is committed to protecting the right of citizens to be informed about the activities of government officials and to ensuring the integrity of government officials. CREW is dedicated to empowering voters to have an influential voice in government decisions and in the governmental decision-making process. CREW uses a combination of research, litigation, and advocacy to advance its mission.

3. In furtherance of its mission, CREW seeks to expose unethical and illegal conduct of those involved in government. One way CREW does this is by educating citizens regarding the integrity of the electoral process and our system of government. Toward this end, CREW monitors the campaign finance activities of those who run for federal office and publicizes those who violate federal campaign finance laws through its website, press releases, and other methods of distribution. CREW also files complaints with the FEC when it discovers violations of the FECA. Publicizing campaign finance violators and filing complaints with the FEC serve

CREW's mission of keeping the public informed about individuals and entities that violate campaign finance laws and deterring future violations of campaign finance law.

4. In order to assess whether an individual, candidate, political committee, or other regulated entity is complying with federal campaign finance law, CREW needs the information contained in receipts and disbursements reports political committees must file pursuant to the FECA, 52 U.S.C. § 30104(a) (formerly 2 U.S.C. § 434(a)); 11 C.F.R. § 104.1. CREW is hindered in its programmatic activity when an individual, candidate, political committee, or other regulated entity fails to disclose campaign finance information in reports of receipts and disbursements required by the FECA.

5. CREW relies on the FEC's proper administration of the FECA's reporting requirements because the FECA-mandated disclosure reports are the only source of information CREW can use to determine if an individual, candidate, political committee, or other regulated entity is complying with the FECA. The proper administration of the FECA's reporting requirements includes mandating that all disclosure reports required by the FECA are properly and timely filed with the FEC. CREW is hindered in its programmatic activity when the FEC fails to properly administer the FECA's reporting requirements.

6. Complainant Noah Bookbinder is the executive director of Citizens for Responsibility and Ethics in Washington. At all times relevant to the complaint, he has been and remains a citizen of the United States and a registered voter and resident of Maryland. As a registered voter, Mr. Bookbinder is entitled to receive information contained in disclosure reports required by the FECA, 52 U.S.C. § 30104(a) (formerly 2 U.S.C. § 434(a)); 11 C.F.R. § 104.1. Mr. Bookbinder is harmed in exercising his right to vote when an individual, candidate, political

committee, or other regulated entity fails to report campaign finance activity as required by the FECA. *See FEC v. Akins*, 524 U.S. 11, 19 (1998), *quoting Buckley v. Valeo*, 424 U.S. 1, 66-67 (1976) (political committees must disclose contributors and disbursements to help voters understand who provides which candidates with financial support). Mr. Bookbinder is further harmed when the FEC fails to properly administer the FECA's reporting requirements, limiting his ability to review campaign finance information.

7. Mr. Bookbinder also is harmed in his ability to communicate to the public and other voters information about the source of funds used for political activities.

Respondent

8. New Models is a tax-exempt organization established in 2001, organized under section 501(c)(4) of the Internal Revenue Code, and based in McLean, Virginia.

9. As of September 16, 2014, New Models was not a registered political committee.

Factual allegations

10. According to New Models' 2012 Form 990 tax return, filed under penalty of perjury, the organization spent a total of \$4,506,176 in 2012. New Models 2012 Form 990, Part I, Line 1 (attached as Exhibit A).

11. New Models further reported contributing \$2,798,000 to independent-expenditure only political action committees, also known as super PACs, registered with the FEC. *Id.*, Schedule C, Part I-C, Line 5. Specifically, New Models reported contributing \$2,171,000 to the Now or Never PAC and \$627,000 to the Government Integrity Fund Action Network ("GIFAN"). *Id.*; Now or Never PAC, Statement of Organization, February 21, 2012; GIFAN,

Statement of Organization, July 11, 2011.¹ Both of the super PACs reported receiving New Models' funds as "contributions" - gifts or other transfers of money made "for the purpose of influencing any election for Federal office," 52 U.S.C. § 30101(8)(A)(i) (formerly 2 U.S.C. § 431(8)(A)(i)) - confirming their political nature. Now or Never PAC, FEC Form 3X, 2012 Post-Election Report, December 12, 2012 (excerpts attached as Exhibit C); GIFAN, FEC Form 3X, 2012 Pre-Election Report, Amended, Dec. 3, 2012.

12. New Models also asserted on its 2012 tax return it made a \$292,000 grant to Citizens for a Working America for the purpose of "issue advocacy." New Models 2012 Form 990, Schedule I, Part II. Despite New Models' characterization, this also appears to be a political contribution. Citizens for a Working America PAC, a super PAC registered with the FEC, reported receiving the \$292,000 contribution from New Models in April 2012. Citizens for a Working America PAC, Statement of Organization, September 10, 2010; Citizens for a Working America PAC, FEC Form 3X, 2012 April Quarterly Report, April 13, 2012 (excerpts attached as Exhibit D).

13. All of the super PACs that received contributions from New Models engaged in extensive political activity influencing federal elections in 2012. Now or Never PAC spent more than \$7.7 million in independent expenditures opposing Democrats and supporting Republicans

¹ New Models named the "Government Integrity Fund" as the recipient of its contribution. New Models 2012 Form 990, Schedule C, Part I-C, Line 5. The Government Integrity Fund is a separate section 501(c)(4) organization, but the New Models contribution clearly went to GIFAN, its associated super PAC. The employer identification number listed on New Models' Schedule C is that of GIFAN, and GIFAN reported the New Models contribution to the FEC. GIFAN, FEC Form 3X, 2012 Pre-Election Report, Amended, December 3, 2012 (excerpts attached as Exhibit B).

running for Congress. Open Secrets, Now or Never PAC, Independent Expenditures, 2012, available at <https://www.opensecrets.org/pacs/indexpend.php?cycle=2012&cmte=C00513432>. GIFAN similarly spent nearly \$2.4 million in federal elections, and Citizens for Working America PAC spent \$855,575. Open Secrets, Government Integrity Fund Action Network, Independent Expenditures, 2012, available at <http://www.opensecrets.org/pacs/indexpend.php?cycle=2012&cmte=C00498832>; Open Secrets, Citizens for a Working America PAC, Independent Expenditures, 2012, available at <https://www.opensecrets.org/pacs/indexpend.php?cycle=2012&cmte=C00488767>.

14. Including the Citizens for a Working America PAC contribution, New Models contributed \$3,090,000 to federal super PACs in 2012 - more than 68.5 percent of its total spending. Even excluding that contribution, New Models' contributions to federal super PACs totaled more than 62 percent of its 2012 spending.²

Count I

15. New Models was a political committee between in 2012, but failed to register as one with the FEC.

16. The FECA and FEC regulations define a "political committee" as "any committee, club, association, or other group of persons which receives contributions aggregating in excess of \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000 during a calendar year." 52 U.S.C. § 30101(4)(A) (formerly 2 U.S.C. § 431(4)(A)); 11

² New Models' political contributions constituted more than half of its spending even considering the entire 2012 political cycle. New Models' combined spending in 2011 and 2012 was \$5,986,241, making its \$3,090,000 in political contributions 51.6 percent of its total expenditures. New Models 2011 Form 990, Part I, Line 18 (excerpts attached as Exhibit E).

C.F.R. § 100.5(a). An “expenditure” includes “any . . . payment . . . made by any person for the purpose of influencing any election for Federal office.” 52 U.S.C. § 30101(9)(A)(i) (formerly 2 U.S.C. § 431(9)(A)(i)); 11 C.F.R. § 100.111(a).

17. New Models made expenditures aggregating in excess of \$1,000 during 2012. A “contribution” includes “any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.” 52 U.S.C. § 30101(8)(A)(i) (formerly 2 U.S.C. § 431(8)(A)(i)); 11 C.F.R. § 100.52(a). As federal super PACs, Now or Never PAC, GIFAN, and Citizens for a Working America PAC only make independent expenditures in federal races. *SpeechNow.org v. FEC*, 599 F.3d 686, 694 (D.C. Cir. 2010); *see also, e.g.*, AO 2010-11 (Commonsense Ten) (authorizing organization that “intends to make only independent expenditures”). Contributions to these super PAC are transfers made for the purpose of influencing an election for federal office, and therefore are expenditures. New Models contributed \$3,090,000 to these super PACs.

18. In addition, only organizations whose “major purpose” is the nomination or election of federal candidates can be “political committees.” *Buckley v. Valeo*, 424 U.S. 1, 79 (1976). The FEC conducts a fact-intensive case-by-case analysis of an organization to determine if its major purpose is the nomination or election of federal candidates. Federal Election Commission, Political Committee Status, Supplemental Explanation and Justification, 72 Fed. Reg. 5595, 5601 (Feb. 7, 2007) (“Supplemental E&J”). An organization can satisfy the major purpose doctrine through sufficiently extensive spending on federal campaign activity. *See FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 262 (1986); Supplemental E&J, 72 Fed. Reg. at 5601.

19. New Models' contributions to Now or Never PAC, GIFAN, and Citizens for a Working America PAC - super PACs that only engage in independent expenditures in federal races - were made for the purpose of influencing federal elections. These contributions accounted for 68.5 percent of New Models' total spending in 2012. Accordingly, New Models' major purpose in 2012 was the nomination or election of federal candidates.

20. FECA and FEC regulations require all political committees to register with the FEC within 10 days of becoming a political committee. 52 U.S.C. § 30103(a) (formerly 2 U.S.C. § 433(a)); 11 C.F.R. § 102.1(d).

21. New Models is not, and has never been, a registered political committee with the FEC.

22. By failing to register as a political committee, New Models violated 52 U.S.C. § 30103(a) (formerly 2 U.S.C. § 433(a)) and 11 C.F.R. § 102.1(d).

Count II

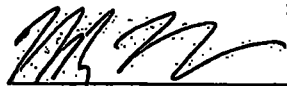
23. As a political committee, New Models was required to file periodic reports with the FEC that, among other things: (1) identified all individuals who contributed an aggregate of more than \$200 in a year to New Models, the amount each individual contributed, and the date of the contribution; (2) identified all political committees that made a contribution to New Models, the amount each committee contributed, and the date of the contribution; (3) detailed New Models' outstanding debts and obligations; and (4) listed all of New Models' expenditures. 52 U.S.C. § 30104(a)(4) (formerly 2 U.S.C. § 434(a)(4)); 52 U.S.C. § 30104(b) (formerly 2 U.S.C. § 434(b)); 11 C.F.R. §§ 104.1(a), 104.8.

24. New Models failed to file any of these reports with the FEC.

25. By failing to file these reports, New Models violated 52 U.S.C. § 30104(a)(4) (formerly 2 U.S.C. § 434(a)(4)), 52 U.S.C. § 30104(b) (formerly 2 U.S.C. § 434(b)), and 11 C.F.R. §§ 104.1(a), 104.8.

Conclusion

WHEREFORE, Citizens for Responsibility and Ethics in Washington and Noah Bookbinder request that the FEC conduct an investigation into these allegations, declare the respondent to have violated the FECA and applicable FEC regulations, and order New Models to correct these violations by filing the disclosure reports required of political committees that, among other things, identify and make public each person who made contributions aggregating more than \$200. In addition, the complainants request that the FEC impose sanctions appropriate to these violations, and take such further action as may be appropriate, including referring this matter to the Department of Justice for criminal prosecution.



ON BEHALF OF COMPLAINANTS

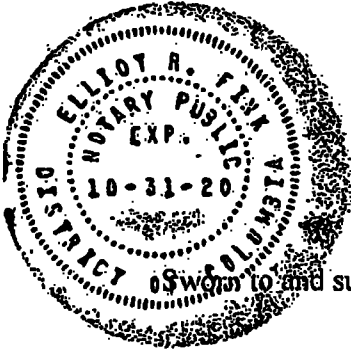
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Verification

Citizens for Responsibility and Ethics in Washington and Noah Bookbinder hereby verify that the statements made in the attached Complaint are, upon information and belief, true. Sworn pursuant to 18 U.S.C. § 1001.



Noah Bookbinder



Sworn to and subscribed before me this 18th day of November, 2015.



Notary Public